## PEOPLE'S PARK DEVELOPMENT (PTE) LTD. v. LIAN YA (PTE) LTD.

**[O.C.J. (Winslow J.) March 20, 1974]**
**[Singapore — Suit No. 2397 of 1972]**

*Landlord and Tenant — Lease — Supply and maintenance of air-conditioning — Requirement for — Service charges — Whether premium — Payment of deposit — Claim for arrears of rent — Premiums on Leases Act (Cap. 280), s. 2.*

The plaintiffs claimed possession of two units collectively known as Room 272 used as a store-cum-office and shop respectively at People's Park Complex. They also claimed for arrears of rent in the sum of $55,604 and mesne profits. These two units had been demised by the plaintiffs to the defendants for 3 years under two leases dated 7th and 16th December 1970. The main question for determination was whether the defendants were entitled to regard the leases as illegal and unenforceable on the ground that the provisions of section 2 of the Premiums on Leases Act had been contravened by the alleged taking of premiums (namely requiring payment for the supply and maintenance of air-conditioning and for service charges relating to cleaning, lighting etc.) and failure to report the same forthwith to the Minister. The court was of the view that the other grounds raised by the defendants had no merit.

**Held:** (1) on the facts as found no premium was in fact charged and the question did not arise as to whether the leases were illegal or unenforceable;

(2) the provision in the leases relating to the payment of deposits was not an obvious devise to defeat the law;

(3) the defendants had failed to satisfy the court that the claim for arrears of rent as formulated by the plaintiffs was unenforceable and the plaintiffs should have judgment as prayed.

Observations on *Yat Yuen Hong* v. *Turquand Youngs & Co.*[2]

*Cases referred to:-*

(1) *Property Holding Co. Ltd.* v. *Clark* [1948] 1 K.B. 648.

(2) *Yat Yuen Hong* v. *Turquand Youngs & Co.* [1970] 2 M.L.J. 93.

(3) *Alexander* v. *Rayson* [1935] All E.R. Rep. 185.

(4) *Wood* v. *Wise* [1955] 1 All E.R. 767.

(5) *Grace Rymer Investment Ltd.* v. *Waite* [1958] 1 All E.R. 138.

CIVIL SUIT.

*Harry Lee Wee (Lee Han Yang* with him) for the plaintiffs.

*L. A. J. Smith* for the defendants.

**Winslow J.:** By a Writ dated 28th October, 1972 the plaintiffs claim:—

(1) arrears of rent in the sum of $55,604;

(2) possession of premises consisting of 2 units collectively known as Room 272 used as a store-cum-office and a shop respectively, on the first floor of the building known as People's Park Complex in New Bridge Road demised to the defendants for 3 years under two leases dated 7th and 16th December, 1970 respectively; and

(3) Mesne profits.

The first lease which was in respect of the store was for 3 years commencing 1st September, 1970 whereby the tenant undertook to pay to the landlord a deposit of 2 years' rent and a further sum of $180 once every month on and after 1st September 1970.

The second lease also commenced on 1st September 1970 and by clause 1 thereof the defendants had to pay firstly, a monthly rent of $6,468 for use of the shop as a departmental store. In addition, they were to pay an additional sum of $1,848 per month as service charges in respect of the supply and maintenance of airconditioning as well as for the cleaning, lighting and maintenance of wash basins, lavatories and passages provided on the first floor, making a grand total of $8,316 per month in monthly payments for rent and service charges. Under the same clause the defendants were required to make a deposit of 24 months' rent and a further sum of $8,316 once every month on and after 1st September 1970.

These clauses appear at pages 30 and 35 of the Agreed Bundle (AB).

It may be useful to add at this stage that in both leases the landlord was required to reinstate the premises to their original condition on termination of these leases at the tenant's cost which was to be deducted from the deposits of 24 months' rent aforesaid.

It is common ground that the premises are not rent controlled.

It is the contention of the defendants that the lease of 16th December, 1970 by requiring payment for the supply and maintenance of airconditioning and for service charges relating to cleaning, lighting and maintenance of wash basins etc., provided for a consideration other than rent, due notice whereof was not duly given as required by section 2 of the Premiums on Leases Act (Cap. 280), and that, accordingly, the lease was illegal and the plaintiffs are not entitled to recover the sums claimed for either rent or service charges.

They further contend that the leases were not registered as required by the Conveyancing and Law of Property Act (Cap. 268).

Furthermore, the defendants contend that the provision for the payment of 24 months' rent as deposit as stated in clause 1 of the leases was made as a condition for the letting of the premises and amounted to the requiring of a consideration within the meaning of the same section of the Premiums on Leases Act and that failure to give due notice thereof similarly rendered the leases and the recovery of rent illegal.

It is further pleaded that, from the month of October 1971 onwards, the plaintiffs reduced the supply of airconditioning to the premises to a level which required the installation of fans by the defendants to render the place sufficiently habitable and usable for the purposes for which it was intended.

It is further contended that charges made in respect of cleaning, lighting and maintaining wash basins and so on were excessive and bore no relation to the actual costs thereof and that such charges together with the charges for airconditioning were payments received otherwise than by way of rent for the purpose of evading property tax which would otherwise have been payable on all charges made and that therefore the lease was illegal and the plaintiffs precluded from recovering the rent payable.

It is also contended that, as no notice had been given under section 18(1) of the Conveyancing and Law of Property Act, action for forfeiture of the leases is premature.

A further amendment to the defence during the trial alleges that the requirement by the plaintiffs that the defendants should instal ducting for airconditioning, a false ceiling, wiring and flooring and, in respect of the store, flooring and wiring at the defendants' expense was the requirement of a consideration within the meaning of section 2 of the Premiums on Leases Act of which the plaintiffs had failed to give notice and that the leases are accordingly illegal.

In their reply, the plaintiffs refer to paragraphs 4 and 8 of the defence and deny that any sums collected in respect of service charges or by way of deposit amount to the collection of any consideration under the Premiums on Leases Act and that, even if they are such premiums, the plaintiffs contend that they are nonetheless entitled to the remedies claimed.

Before dealing with the questions of law involved, it may be convenient for me to state my findings on the facts herein as follows: —

(a) The plaintiffs' manager, Lim Woon Kiat, gave a simple, straightforward story to the effect that he negotiated the leases with Lau Song Hwai and Lau Cher Hong who represented the defendants. He allowed the defendants to enter into occupation of Unit 272 on 15th July 1970 giving them a month and a half in which to settle down before commencing the leases which were eventually signed in December 1970 showing the date of commencement of such leases as 1st September 1970.

(b) The leases in question expired on 31st August 1973 just before the conclusion of the hearing of this case and, in the course of the evidence, it transpired that Unit 272 is now being occupied by a number of other people who are stall-holders with, as is set out later, the signboard of Hup Sheng (Pte.) Ltd. adorning the entrance thereto in substitution for that of the defendants.

(c) At the end of 1970, this witness said that he received AB40 from the Property Tax Division of the Inland Revenue Department to which he replied at AB42 on 11th February 1971 giving the particulars required by that Division including those relating to tenancies of Units in the Podium Block of the People's Park Complex of which Unit 272 was one. The plaintiffs were subsequently assessed to tax as at AB56 dated 30th August 1972. It should be remembered that, at the time when the defendants went into occupation of Unit 272, the entire building project at People's Park Complex had not been completed and that Certificates of Fitness had not yet been obtained. Counsel for the defendants did not pursue this point having raised it in cross-examination and it appears that temporary occupation licences were in fact granted by the Assistant Director of Buildings. It would also appear from the evidence of the architect, who was called as a witness for the plaintiffs, that since the Tower Block had not yet been completed he believed that no Certificate of Fitness would be issued until after such completion.

(d) Considerable time was spent in the cross-examination of the plaintiffs' manager towards showing that the service charges contained in the lease were excessive, that in fact the services did not measure up to minimum standards of cleanliness and efficiency, that the defendants were compelled to undertake various responsibilities relating to internal wiring, lighting, ducting and a false ceiling at their own expense before they were granted the leases and that, in the circumstances, the plaintiffs had acted illegally so as to justify the defendants in refusing to pay what they had agreed in the leases to pay.

(e) This witness said that airconditioning was centralised and that there was a regular supply of cool air to the premises but that any internal ducting to distribute such air within the premises demised was entirely a matter for the defendants and that if the defendants had told the plaintiffs that they did not want airconditioning the plaintiffs would not have wanted a tenant like that. In re-examination, this witness made it quite clear that it would not be possible to work in a unit such as Unit 272 without airconditioning. In fact all the units had to have airconditioning as there was no other form of ventilation.

(f) Furthermore, with regard to cleaning, lighting and maintenance of wash basins and lavatories and so on, this witness again said that if potential tenants did not want to pay for such services, the plaintiffs would not be interested in giving people like the defendants a lease. It will be observed that these matters of which complaint has been made are matters, the terms of which are incorporated in the leases and are not matters extraneous to such leases. The plaintiffs were not demanding additional payments for non-existent services and supplies as a condition before they would grant a lease nor did they require such payments over and above whatever the lease contained.

(g) There was a further complaint that the deposits required to be made in respect of rent were illegal and amounted to premiums under the Act in question. As has earlier been pointed out, there was provision in the lease for the landlord to deduct from the deposits at the tenant's cost any expenses incurred in restoring the premises at the end of the lease to their former condition. These deposits would finally be returned to the tenant less such expenses. This witness made it quite clear that the deposit required covered only the rent of the premises in question and not other matters like service charges and the supply of airconditioning. If people were not prepared to pay such deposits in respect of rent he would not want such people as tenants.

(h) The architect for the plaintiffs also gave evidence in the course of which he pointed out that airconditioning *i.e.* the supply of cool air was provided up to one of the perimeter walls of the premises in question and that tenants would know this. Furthermore, he said that if the tenant wanted to have airconditioning he must have ducting inside the premises in order to obtain a good distribution of cool air inside the unit in question. The architect also gave evidence that Unit 272 had a concrete ceiling and a concrete floor which was level. In short, tenants had to take the premises as they found them and, if they desired

to carry out internal decorations and other improvements, that was entirely up to them.

(i) A witness from the Property Tax Department confirmed that the particulars supplied by the plaintiffs in response to their request for such particulars disclosed that the plaintiffs collected a rent of $6,468 as rent and that charges for the supply and maintenance of airconditioning as well as other service charges amounted to $1,848 p.m. and that it was on this basis that the premises were assessed to tax.

(j) The accountant for the plaintiffs also gave evidence to the effect that the total expenditure on maintenance charges and so on exceeded the income from collections for 1971 and 1972. He said that all the income collected in respect of maintenance charges would go to the management committee and ultimately to the management corporation under Part IV of the Land Titles (Strata) Act (Cap. 277). He also said that the charges in respect of maintenance etc. amounted to $4 per square foot per annum in respect of shops and $3 per square foot per annum in respect of offices and that on this basis the defendants owed the plaintiffs in respect of maintenance charges for 1971 and 1972 the sum of $22,176 for each year and that the defendants had not paid these sums.

(k) The surveyor for the plaintiffs also gave evidence earlier in the proceedings confirming that $2.30 per square foot was charged for the supply of cool air and that $1.70 per square foot was the balance of the $4 which went towards the remaining items of cleaning, lighting, maintenance of basins, cleaning of lavatories and passages on the first floor, amongst other things.

(l) Having regard to the heavy fire under which witnesses for the plaintiffs came during cross-examination, they stood up extremely well, in my opinion to that cross-examination in comparison with the performance of the principal witness for the defendants, Lau Cher Hong, who was, it will be remembered, one of the persons who negotiated the leases with the plaintiffs' manager.

(m) Lau Cher Hong said that he was formerly the managing director of the defendants. He confirmed that he negotiated the leases with the aid of his father, Lau Song Hwai (who was the other person mentioned by the plaintiffs' manager). This witness carried no conviction in my mind regarding the truth or correctness of what he said in evidence. His chief complaint was that although they went into occupation fairly early in 1970 the lease was not signed until December 1970 and that the terms of the lease as signed were different from what all of them had previously discussed. He said that he and his father came to know that they had to pay "tea money" of 24 months' rent at $8,316 per month. He also said that the plaintiffs promised to get people to put up advertisements in the premises demised. He said that none of these matters was incorporated in the lease. He agreed, however, that the amount claimed in respect of 24 months' rent as deposit was merely in respect of rent and did not include service and maintenance charges.

(n) He said that the ceiling was unthinkably ugly and that without the false ceiling it was "unpresentable" because of the airconditioning ducting. He also complained that the original ceiling was sloping.

(o) He agreed in cross-examination that no rent had been paid since 27th April 1971 either towards rent or service and other charges and agreed that he had been in occupation for more than 2 years without making such payments. He referred to certain cheques in payment of rents which he had made to the plaintiffs but was unable to give any details as to whether they were all dishonoured or not. He said he resigned his post as managing director in October 1971 and became a director and that he was not in a position to say if his company had sufficient funds to pay rent. He agreed that his father was a bankrupt from 1969 at least before he himself entered the business. He said he could not answer any question as to whether the defendants were solvent or insolvent without a meeting of all the directors. He admitted that he had a copy of the leases and had had them explained to him and that he understood them. *He eventually agreed that whatever was not in the lease was not of any importance.* He agreed that the electrical connections terminated at one wall of the premises. It was not really in dispute that the defendants had to look after the interior installations themselves.

(p) In my opinion, he was a completely unsatisfactory witness. He was evasive. He did not seem to know anything at all about the business apart from what little he had to do with it in the early stages of the negotiations for the leases and, for most of his other information, he was relying on what he heard from others and not on his personal knowledge.

(q) It would appear that he only became active again once litigation began. He sounded quite mysterious about the fact that since 1st September 1973, before the trial came to an end, another firm known as Hup Sheng had put up its name on a sign board in place of the name of the defendants outside the premises. He said that Hup Sheng had rented the place from the defendants and that the defendants had allowed Hup Sheng to erect a sign board of their own and that the defendants had removed their own sign board. It is clear that Hup Sheng (Pte.) Ltd. was incorporated in August 1973 or thereabouts and that it then comprised members, some of whom were his own relatives, including his sister. He said, significantly, that he did not wish to meddle in his sister's affairs so long as it was profitable to the defendants.

(r) The next witness called for the defence was a young lady who said she was working as a clerk of the defendant company at their South Bridge Road office. It only turned out, more than half way during her cross-examination, that she was in fact the wife of Lau Cher Hong, the previous witness, who was the principal witness for the defendants. She complained that the airconditioning to the premises had been reduced after October 1971 and that in 1972 she noticed a number of fans in use inside the departmental store. Although she only had a casual glance she formed the general impression that there were a large number of fans. She admitted being a shareholder in the defendant company. She made a significant answer towards the end of her evidence to the effect that the false ceiling in the departmental store "looks nice"

and that "it is like any ordinary ceiling" thus contradicting her husband completely. Admittedly the ceiling of the small store which was used as an office and for which the rent was $180 per month had a sloping ceiling. I certainly did not form the impression that there was anything at all seriously wrong with the ceiling of the departmental store.

(s) At the end of all this evidence, I allowed the plaintiffs to recall their manager who said that he had never heard or received complaints about airconditioning from the defendants until 8th May 1973 when he received Exhibit P15 from the defendants' solicitors. He however admitted receiving a letter from Mr. Smith for the defendants in December 1972, Exhibit D16. This witness did not succeed in rebutting the evidence that there had at least been a reduction in the supply of cool air some time after October 1971. He himself said that he had never visited Unit 272 after October 1971 although he might have passed by the premises in the corridors. He said that he did not pay any particular attention to what was inside these premises although he did say that he did not see any fans. This is controverted by the evidence, in my opinion, of another stallholder who was called as a witness by the defendants after the plaintiffs' manager had given evidence in rebuttal.

(t) This witness, who was called at a very late stage, was stall holder in the departmental store and he said that in February 1973 he reported that the airconditioning to the premises had been cut. He however confirmed that the airconditioning was satisfactory from 1970 till 1971 when it was very cold and that none of the stallholders installed fans in those days but that he began to feel, in October 1971, that the airconditioning was becoming gradually reduced.

(u) It follows from what I have said so far that I am not impressed by the defence except in regard to the reduction in the flow of cool air into the premises at least from early 1972 onwards which I accept as a fact.

(v) I find on the facts that the defendants had no intention from the commencement of the lease, and even earlier, ever to use the premises for their own purposes as a departmental store. I am completely satisfied, basing my finding on the admission of the principal witness himself, Lau Cher Hong, that the only business he was doing there was to collect rents from persons to whom he had handed over the premises as stallholders. His wife confirmed that what in effect was being done in the premises was the collection of rents from other people who were occupying them and nothing else.

(w) Exhibit P4 is a copy of an agreement between the defendants and one of their stallholders (referred to as "licensee"). If this is representative of agreements with other stallholders as well, it clearly indicates that the defendants are themselves taking refundable deposits of large sums from them and passing on, in addition to the monthly fees, liability for maintenance and other charges imposed by the plaintiffs.

Counsel for the plaintiffs, with reasonable cause, in my opinion, called the defendants a sham company. The only business they admittedly conducted was to accommodate in the premises a large number of stallholders from whom they collected rents. Since no complaint has been made of a breach of covenant at clause 2(9) in this respect by the plaintiffs I do not have to consider whether these stallholders are only mere licensees.

The conduct of the defendants in allowing Hup Sheng (Pte.) Ltd. which was only incorporated in August 1973, to put up their own sign board over the departmental store towards the later stages of the trial itself can only be described as amazing, to say the least, and reinforces the view to which I was impelled, just before this evidence of their conduct came to light, that whatever complaints they have made, with the exception of their complaint of a reduction in the supply of cool air, have been made in an attempt to avoid liability to the plaintiffs on flimsy grounds having little or no foundation in fact. They even went so far as to say, in respect of airconditioning, that it had been completely cut off when it was not.

The main question that remains is the question whether the defendants are entitled to regard the leases as illegal and unenforceable on the ground that the provision of section 2 of the Premiums on Leases Act have been contravened by the alleged taking of premiums and failure to report the same forthwith to the Minister.

I find no merit in the other grounds raised by the defence purportedly involving questions of law for the reasons advanced by counsel for the plaintiffs as amplified in his final written submissions.

Having disposed of my findings of fact about which I was never in doubt, I now turn to the law on this main question as presented on both sides. This is the first time, I am informed, that the question whether a premium or a fine has been demanded or taken within the meaning of section 2 of the Premiums on Leases Act has come up for consideration in Singapore so as to render a lease unenforceable for illegality and the rents irrecoverable.

Section 2 of the said Act reads as follows: —

"2.—(1) It shall be unlawful for any landlord, or agent of a landlord, as a condition of the grant, renewal or continuance of any lease or agreement for the tenancy of any building or part of a building, or for any person as a condition of giving up possession of any building or part of a building, to require the giving of any consideration whatsoever whether with or without reservation of rent unless —

(a) particulars of the consideration and of the building or part of a building are furnished in a written document; and

(b) that document is forthwith presented for inspection, by the landlord or his agent or any person giving up possession as aforesaid, to the Minister."

It will be noticed that the long title provides that the Act as originally enacted was designed to control the taking of fines or premiums on grant of tenancies and to provide for the giving of rent receipts. Although it is not usual to consider the objects and reasons for the legislation in question for the purpose of construing it, these objects were referred to me in the course of the trial without objection and it seems quite clear that in 1921 when the Act was first introduced as a Bill it was aimed at ensuring the disclosure

of all premiums on leases because it was notorious that, in many cases, the premiums received were neither disclosed to the Municipal Commissioners of the time nor stated in the lease or agreement for a lease for the purposes of the Stamp Ordinance nor even accounted for to the landlord whereby the public revenues had been defrauded.

Turning to the Act itself, it seems to me that the requiring of a premium or a fine is not prohibited, as such, by section 2. It is prohibited unless certain conditions are complied with. What the Act makes unlawful and punishable is the failure on the part of anyone charging a premium to notify the proper authority thereof forthwith, not the charging of the premium itself. Nor does the Act expressly or by necessary implication prohibit the leases themselves.

If, for example, a landlord were to demand "key-money" or "tea money", as it is sometimes called, of a large lump sum in addition to the rent stipulated in the lease, which may be comparatively small, then, of course, if such matters are not disclosed forthwith to the proper authority, the public revenues would suffer accordingly in that, for example, stamp duty would be lower, to say nothing of other accretions to revenue like property tax which may be affected.

It is the concealment of such additional sums and the requiring of valuable consideration which bears no relationship to rent in its wider signification of "the contractual monetary obligation the payment of which is the condition of the rights to enjoy the property granted" (see *Property Holding Co. Ltd.* v. *Clark*,[1] as a condition precedent to the grant of a tenancy and, in the case of rent controlled premises, the requiring of rent in excess of the standard or premitted rent which constitute the evils against which the Act provides.

It should be remembered that both the rapacity of landlords as well as that of tenants is contemplated by section 2 of the Act — since it also provides against the requirement of valuable consideration by tenants for the giving up of possession of the property demised.

Section 4 of the Control of Rent Act (Cap. 266) on the other hand, is aimed at the rapacity of landlords alone and is clearly aimed at prohibiting the charging of premiums by them altogether in such cases. That Act is for the protection of tenants. The Premiums on Leases Act protects revenue and is aimed at both landlords as well as tenants who charge premiums without complying with the conditions therein imposed.

If a premium is charged and full disclosure as required is not made, the lease in question is not, in my view, avoided for illegality. It is the requirement of a premium without compliance with the said conditions which is rendered illegal and not the lease itself which contains such a requirement.

If a premium has been paid by a tenant for the tenancy of premises to which the Control of Rent Act applies, it can be recovered by the tenant from the landlord under section 4 thereof. Since the Act protects tenants it would be unconscionable to regard the lease itself as void and unenforceable and thereby to enable a rapacious landlord to throw his tenant out into the streets on the ground that the grant of the tenancy itself is unlawful. What is unlawful is the taking of prohibited premiums.

Similarly, under section 2 of the Premiums on Leases Act, the premium can be recovered by the tenant. It is the taking of premiums by a landlord without disclosure forthwith which is unlawful.

In *Grace Rymer Investment Ltd. infra*, at page 145 it is made clear that similar English Acts do not treat a tenant as tainted by the offence committed by the landlord and regard the tenant as a person worthy of protection. I accept this proposition.

What then is the position of a landlord who takes a premium without disclosure as required by the Premiums on Leases Act quite apart from the fact that such a premium becomes recoverable by the tenant, if the tenant is in arrears of rent? Does the whole lease become unenforceable so as to deprive the landlord of these arrears?

In my judgment, the lease continues to be operative so as to enable arrears of rent to be recovered in the same way as tenants continue to be protected by the recognition granted to their entitlement to the unexpired portion of their leases. The case of *Yat Yuen Hong* v. *Turquand Youngs & Co.*[2] to which I shall refer again later did not decide otherwise. Moreover this issue did not arise. That was a case where the tenant's claim to compensation money promised by the landlord under an agreement for giving up possession of premises required by the landlord failed on repudiation of the agreement by the landlord. It was held that as the tenant had not reported this forthwith to the relevant authority the *agreement was unlawful* and the tenant's claim failed. The question of the *validity of the lease was unaffected* by the decision of the Court of Appeal.

As I have found on the facts of the present case, no premium was in fact charged and the question does not arise as to whether the leases are illegal and unenforceable.

The facts in *Alexander* v. *Rayson*[3] can be distinguished. It is no authority in favour of any contention based on section 2 of the Premiums on Leases Act nor do I find that any fraud was perpetrated on revenue by any concealment of the true rent and service charges.

As Evershed M. R. held in *Wood* v. *Wise*: [4]

"The conception of 'requiring' some money payment as a 'condition' of the grant of a tenancy is well understood. To my mind, there is a real distinction between such a requirement as a condition precedent to the grant of a tenancy (on any terms) on the one hand, and, on the other hand, the provision in the lease or contract of tenancy for payment of some lump sum by way (as in the present case) of compounding of rent and in addition to the periodic rent. It is the former, and the former only, which is prohibited."

Further, in *Grace Rymer Investment Ltd.* v. *Waite*,[5] Danckwerts J. at page 144 said:

"First, were the sums paid premiums? I think that it cannot in every case be requiring a premium or unlawful to require payment of rent in advance. After all, it is well known that rents are often required to be paid in advance

where the circumstances suggest that the tenant is not a very stable character. It may well be, however, that the demand of several years' rent in advance cannot be justified on any such ground. At what point is the line to be drawn? I apprehend that one test may be that if the demand is obviously a device to get over some provision of the law, and not merely a *bona fide* attempt to prevent the landlord being deprived of the ability to recover his rent, the transaction may be scrutinised and be shown to be something other than what it is called."

It seems to me on the facts that the provision relating to the deposit in this case was not an obvious device to defeat the law.

It seems clear on the authorities that each case must be decided on its own facts and that the substance of the transaction must be regarded, not the name or label given to the payment. What in fact was the true nature and effect of the transaction even if, for example, the leases provided for the deposit of 24 months' rent in advance and payment of service charges as in this case?

I find that there has been no attempt to conceal the service charges in question or to exaggerate them and that the payment of the deposit which was agreed by the defendants was a reasonable precautionary measure adopted to ensure in the case of a new unit in a new building project which was being completed in different phases that tenants of the desired moral and financial calibre became available. It is pertinent to note that the leases provide for deduction from this deposit of the expenses of repairs to the premises so as to restore them to their original condition at the termination of the lease. It is not as if the plaintiffs had said, "Look, the rent you are going to pay is so much per month for rent and so much for a whole lot of fictitious services which I am not really providing or ever going to provide and in addition you are going to pay me a lump sum of $100,000. I am going to keep entirely silent about all these matters. I am only going to say in the lease that what you have done is just to agree to pay so much as rent." Then clearly all the matters which are not set out as terms of the lease will be clearly matters which would be regarded as premiums which should be disclosed by virtue of section 2 of the Premiums on Leases Act.

On the facts of the present case I do not find any such conduct on the part of the plaintiffs. The negotiations for the leases seem to have been conducted in a manner which can be described as being open and above-board so far as the plaintiffs are concerned. I can see no reason why I should, on the facts which reflect no credit on the defendants and their conduct, decide that a premium has been taken by the landlord in question and that therefore their claim for arrears due is not recoverable.

Before I conclude this judgment I should like to refer to the case of *Yat Yuen Hong, supra*, which was mentioned by both counsel. Mr. Smith for the defendants submitted that that case is a strong authority in his favour that the payment in question was a premium whereas Mr. Wee on behalf of the plaintiffs said that that case has no relevance to the point before me. I agree with Mr. Wee because, on a careful reading of the judgment of the Court of Appeal in that case, it does not seem to me that this question was ever argued in any way. In that case, it seems to have been regarded as a foregone conclusion that the payment in question to the tenant on giving up possession to the landlord was in fact a premium which should have been notified. So far as one can see, that case merely decided the meaning of the word "forthwith" occurring in the latter part of section 2 and whether there was then anyone representing the Minister to whom a written document containing the particulars required should have been presented for inspection forthwith.

I have come to the conclusion, in all the circumstances of this case, that the plaintiffs succeed in their contentions and that the defendants have failed to satisfy me that the claim for arrears as formulated in prayer 1 by the plaintiffs is unenforceable subject of course, to an appropriate reduction in respect of the supply of cool air from 1972 onwards to be decided in Chambers if the parties are unable to agree a figure in this respect.

Judgment will accordingly be entered as above on prayer 1 as well as in terms of prayer 2 for possession with effect from 31st March, 1974 and for mesne profits and costs as claimed.

*Order accordingly.*

Solicitors: *Lee, Woo & Partners; L. A. J. Smith.*

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## MARIMUTHU BALIKRISHNAN v. PUBLIC PROSECUTOR

**[A.Cr.J. (Wee Chong Jin C.J.) April 3, 1974]**
**[Singapore — Magistrate's Appeal No. 217 of 1973]**

*Firearms and Ammunition (Unlawful Possession) Act (Cap. 100) s. 3 — Possession of firearm and of ammunition — Whether one offence or two distinct offences.*

*Criminal Law and Procedure — Sentences — When to run consecutively — Criminal Procedure Code (Cap. 113), s. 17.*

In this case the appellant was convicted on 2 charges viz: (a) possession of a gun; and (b) possession of 5 rounds of ammunition in contravention of section 3 of the Firearms and Ammunition (Unlawful Possession) Act (Cap. 100). He was sentenced by the Senior District Judge to 3 years' imprisonment on each charge, the sentences to run consecutively. The facts which the appellant admitted and upon which he was convicted show that the appellant took out the gun and the 5 rounds from behind a television set and sold it to a police officer who was acting as 'agent provocateur' in the sale. The appellant was paid in marked notes and subsequently arrested and charged.

On appeal the main argument raised by counsel for the appellant was that having regard to the fact that the gun and bullets were kept in the same place there was in fact one offence only justifying one punishment and one sentence; and that the consecutive sentence was wrong in principle having regard to the fact that both offences were not distinct offences within the meaning of section 17 of the Criminal Procedure Code. Counsel for the respondent contended otherwise.

**Held,** dismissing the appeal: the consecutive sentence was not wrong in principle.

*Case referred to:-*

(1) *R. v. Faulkner* (1972) 56 Cr. App. R. 594; [1972] Crim. L.R. 577.

MAGISTRATE'S APPEAL.

*Datuk David Marshall* for the appellant.